

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TEXARKANA DIVISION

THE UNITED STATES, FOR THE USE OF  
TOP FLIGHT STEEL, INC.,

Plaintiff,

V.

ENTERPRISE PRECAST CONCRETE OF TEXAS, LLC; B.L. HARBERT INTERNATIONAL LLC; TRAVELERS CASUALTY AND SURETY COMPANY,

Defendants.

Civil Action No. 5:22-CV-00142-RWS-JBB

**ORDER ADOPTING THE REPORT AND RECOMMENDATION**  
**OF THE UNITED STATES MAGISTRATE JUDGE**

The above-entitled and numbered civil action was referred to United States Magistrate Judge J. Boone Baxter pursuant to 28 U.S.C. § 636. United States, for the Use of Top Flight Steel, Inc. (“Top Flight”), is a sub-subcontractor. Top Flight brings this action against contractor, BL Harbert International, LLC (“BLHI”); subcontractor, Enterprise Precast Concrete of Texas, LLC (“Enterprise”); and surety, Travelers Casualty and Surety Company (“Travelers”). Top Flight brings Miller Act claims against BLHI and Travelers, as well as non-Miller Act, contract-based claims against Enterprise.

On June 15, 2023, the Magistrate Judge issued a Report and Recommendation (Docket No. 57), recommending that: (1) Enterprise’s Motion to Stay Litigation Pending Arbitration (Docket No. 32) be granted only as to Top Flight’s non-Miller Act claims against Enterprise, and that those claims be stayed pending arbitration, but that Enterprise’s (and Top Flight’s) request to compel

arbitration of Top Flight's Miller Act claims against BLHI and Travelers be denied, with Enterprise's request that BLHI and Travelers be bound by the results of the arbitration being denied without prejudice to refiling after arbitration; (2) BLHI and Travelers' Motion to Dismiss Pending Arbitration (Docket No. 42-1) be denied without prejudice to being raised in a future motion for summary judgment and that BLHI's and Travelers' Alternative Motion to Stay Pending Arbitration (Docket No. 42-2) be granted; and (3) that the undersigned instruct the Clerk of the Court to stay this case and to advise the parties that they may move to vacate the stay upon the final resolution of the arbitration proceedings between Top Flight and Enterprise.

The Report of the Magistrate Judge which contains his proposed findings of fact and recommendations for the disposition of such action has been presented for consideration. No objections to the Report and Recommendation were filed. Thus, any aggrieved party is barred from *de novo* review by the district court of the proposed findings and recommendations of the Magistrate Judge.

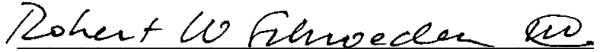
There being no grounds of plain error or manifest injustice, the Court **ADOPTS** the Report of the United States Magistrate Judge (Docket No. 57) as the findings and conclusions of this Court. Accordingly, it is hereby

**ORDERED** that Defendant Enterprise Precast Concrete of Texas, LLC's Motion to Stay Litigation Pending Arbitration and Memorandum in Support (Docket No. 32) is **GRANTED** only as to Top Flight's non-Miller Act claims against Enterprise, and that those claims be stayed pending arbitration, but that Enterprise's (and Top Flight's) request to compel arbitration of Top Flight's Miller Act claims against BLHI and Travelers is **DENIED**, with Enterprise's request that BLHI and Travelers be bound by the results of the arbitration being **DENIED WITHOUT PREJUDICE** to refiling after arbitration. It is further

**ORDERED** that BLHI and Travelers' Motion to Dismiss Pending Arbitration (Docket No. 42-1) is **DENIED WITHOUT PREJUDICE** to being raised in a future motion for summary judgment and that BLHI's and Travelers' Alternative Motion to Stay Pending Arbitration (Docket No. 42-2) is **GRANTED**. It is further

**ORDERED** that the Clerk of the Court shall stay this case and advise the parties that they may move to vacate the stay upon the final resolution of the arbitration proceedings between Top Flight and Enterprise.

**So ORDERED and SIGNED this 14th day of July, 2023.**

  
ROBERT W. SCHROEDER III  
UNITED STATES DISTRICT JUDGE